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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 NATHANIEL MARCUS GANN,

12 Plaintiff,

13 vs.

14 VALLEY STATE PRISON, et al.,

15 Defendants.
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1:19-cv-01797-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANTS
FISHER, PAEZ, ANGUIANO, CHAPAS, LUCERO,
MARQUEZ, CRUZ, AND MOOSEBAUR FOR
VIOLATION OF RLUIPA, VIOLATION OF THE
FIRST AMENDMENT FREE EXERCISE CLAUSE,
AND ADVERSE CONDITIONS OF CONFINEMENT
IN VIOLATION OF THE EIGHTH AMENDMENT;
AGAINST DEFENDANTS FISHER AND
MOOSEBAUR FOR FAILURE TO PROTECT
PLAINTIFF IN VIOLATION OF THE EIGHTH
AMENDMENT; AND AGAINST DEFENDANT
MOOSEBAUR FOR RETALIATION IN
VIOLATION OF THE FIRST AMENDMENT; AND
THAT ALL OTHER CLAIMS AND DEFENDANTS
BE DISMISSED**

OBJECTIONS, IF ANY, DUE IN 14 DAYS

23 Plaintiff Nathaniel Marcus Gann is a state prisoner proceeding *pro se* and *in forma*
24 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff Gann and fourteen
25 co-plaintiffs filed the Complaint commencing this action on December 26, 2019, against Valley
26 State Prison, et al., for subjecting them to adverse conditions of confinement in violation of the
27 Eighth Amendment by serving substandard food in Kosher meals at VSP. (ECF No. 1.) On
28 January 7, 2020, the court issued an order severing the fourteen co-plaintiffs' claims from

1 Plaintiff Gann's claims and opening new cases for each of the co-plaintiffs. (ECF No. 10.) Each
2 of the fifteen plaintiffs was ordered to file an amended complaint in his own case within thirty
3 days. (Id.) On February 7, 2020, Plaintiff filed the First Amended Complaint in this case. (ECF
4 No. 20.)

5 The First Amended Complaint names as defendants Valley State Prison, CDCR, John
6 Doe #1 (Headquarter Community Resource Manager), John Doe #2 (Associate Director of the
7 Division of Adult Institutions), John Doe #3 (CDCR Departmental Food Administrator), J.
8 Knight (Appeals Examiner), T. Thornton (Appeals Analyst, VSP), Raythel Fisher, Jr. (Warden,
9 VSP), Timothy Anderson (inmate), John Doe #4 (inmate), Paez (Dining Hall Officer), Keene
10 (Housing Unit Officer), Avila-Gonzalez (Correctional Officer), Sergeant Clements, Sergeant
11 Santoya, C. Hernandez (Food Manager), Mohktar (Food Manager), Moosebaur (Culinary
12 Supervisor Cook II), Hayman (Culinary Supervisor Cook II), Cruz (Culinary Supervisor Cook),
13 Chapas (Culinary Supervisor Cook), Lucero (Culinary Supervisor Cook), Anguiano (Culinary
14 Supervisor Cook), and Marquez (Culinary Supervisor Cook) (collectively, "Defendants"), and
15 brings claims for violation of RLUIPA, violation of the First Amendment Free Exercise Clause,
16 adverse conditions of confinement under the Eighth Amendment, failure to protect Plaintiff under
17 the Eighth Amendment, retaliation under the First Amendment, equal protection under the
18 Fourteenth Amendment, improper prison appeals process, and conspiracy.

19 The court screened the First Amended Complaint and found that it states cognizable
20 claims against Defendants Fisher, Paez, Anguiano, Chapas, Lucero, Marquez, Cruz, and
21 Moosebaur for violation of RLUIPA, violation of the First Amendment Free Exercise Clause,
22 and adverse conditions of confinement in violation of the Eighth Amendment; against
23 Defendants Fisher and Moosebaur for failure to protect Plaintiff in violation of the Eighth
24 Amendment; and against Defendant Moosebaur for retaliation in violation of the First
25 Amendment. (ECF No. 22.) On March 11, 2021, the court issued a screening order requiring
26 Plaintiff to either (1) file a Second Amended Complaint, or (2) notify the court that he is willing
27 to proceed only with the claims found cognizable by the court. (Id.)
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1 On April 29, 2021, Plaintiff notified the court that he is willing to proceed only with the
2 claims found cognizable by the court. (ECF No. 28.)

3 Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 4 1. This action proceed only against Defendants Warden Raythel Fisher, Jr., Dining
5 Hall Officer Paez, and Culinary Staff Members Anguiano, Chapas, Lucero,
6 Marquez, Cruz, and Moosebaur for violation of RLUIPA, violation of the First
7 Amendment Free Exercise Clause, and adverse conditions of confinement in
8 violation of the Eighth Amendment; against Defendants Warden Raythel Fisher,
9 Jr., and Moosebaur for failure to protect Plaintiff in violation of the Eighth
10 Amendment; and against Defendant Moosebaur for retaliation in violation of the
11 First Amendment;
- 12 2. All remaining claims and defendants be dismissed from this action;
- 13 3. Plaintiff's claims for violation of equal protection, improper inmate appeals
14 process, and conspiracy be dismissed from this action based on Plaintiff's failure
15 to state any claims upon which relief may be granted;
- 16 4. Defendants CDCR, John Doe #1 (Headquarter Community Resource Manager),
17 John Doe #2 (Associate Director of the Division of Adult Institutions), John Doe
18 #3 (CDCR Departmental Food Administrator), J. Knight (Appeals Examiner), T.
19 Thornton (Appeals Analyst, VSP), Timothy Anderson (inmate), John Doe #4
20 (inmate), Keene (Housing Unit Officer), Avila-Gonzalez (Correctional Officer),
21 Sergeant Clements, Sergeant Santoya, C. Hernandez (Food Manager), Mohktar
22 (Food Manager), and Hayman (Culinary Supervisor Cook II) be dismissed from
23 this action based on Plaintiff's failure to state any claims against them upon which
24 relief may be granted; and
- 25 5. This case be referred back to the Magistrate Judge for further proceedings,
26 including initiation of service of process.

27 These Findings and Recommendations will be submitted to the United States District
28 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within

1 **fourteen (14) days** after the date of service of these Findings and Recommendations, Plaintiff
2 may file written objections with the Court. The document should be captioned “Objections to
3 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
4 objections within the specified time may waive the right to appeal the District Court’s order.
5 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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7 IT IS SO ORDERED.

8 Dated: May 1, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE